

## REMARKS

### **Provisional Double Patenting Rejection**

Reconsideration of the double patenting rejection is respectfully requested. U.S. Patent Application 10/475,157 has issued into U.S. Patent No. 7,514,039 since issuance of the Office Action. A copy of the issued patent is enclosed.

The claims of the subject application are patentably distinct from the claims of the U.S. Patent No. 7,514,039. The claims of U.S. Patent No. 7,514,039 are directed to system and methods then comprise a pyroelectric film positioned adjacent to a reagent deposit and the pyroelectric film is adapted for detecting heat absorbed in the reagent deposit. There is no such limitation in the claims as currently pending. Based upon the original claims and the amendments made herein, reconsideration of the double patenting rejection is respectfully requested.

### **Claim Rejections under 35 U.S.C. §102**

In the Office Action, the Examiner has rejected claims 1-10 and 12-16 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,976,881 issued to Klingner (hereinafter "Klingner") or U.S. Patent Application Publication 2002/0011934 (hereinafter "Cacioli").

The claims of the subject Applicants have been amended to indicate that the protective covering comprises at least one opening that is hermetically sealed by a substantially transparent window. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Neither Klingner nor Cacioli disclose a system for detecting a breach of an exposure protection device by an amount of a target substance, the device comprising an opaque protective covering, the protective covering comprising at least one opening that is hermetically sealed by a substantially transparent window. The protective glove of Cacioli includes a microchip and a sensor. The microchip senses changes in signals from the sensor and produces an alarm or wireless signal to alert a person of the breach. There is no opening in the glove of Caciolo that is hermetically sealed by a substantially transparent window.

Klingner is the same. Though the glove of Klingner includes a pad carrying a reagent which is responsive to the contaminant for producing a color change, the glove of Klingner does not include an opening in the glove that is hermetically sealed by a substantially transparent window. If the glove of Klingner is transparent or translucent, then the color change indicating breach will be apparent to a user. However, if the glove of Klingner is opaque, the user will not know of the breach until the glove is removed. See Klingner, column 4, lines 10-15. There is no suggestion or motivation stated in the prior art or in the general knowledge of one skilled in the art to make an opening in the protective covering and attempt to hermetically

seal the opening with a window. There is no objective reason or motivation for one skilled in the art to intentionally create an opening in a protective covering. This is why so many breach detection devices rely on an electronic signal for indication of a breach of opaque coverings.

In addition, Claims 1-9 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,734,323 issued to Hermes et al. (hereinafter "Hermes") and Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication 2004/0141879 (hereinafter "Loomis") Neither Loomis nor Hermes anticipate the claims of the subject application for the same reasons as provided above. In regards to Loomis, Loomis discloses a System and Method for Detection of a Target Substance and does not intend to provide a protective covering or detect a breach. The system of Loomis merely detects a substance in a local environment.

Applicants further submit that the claims of the Subject Applications are not obvious based upon the disclosure of any of the cited references. The Supreme Court has enunciated the four factual inquiries required to determine obviousness: (A) determining the scope and contents of the prior art; (B) ascertaining the differences between prior art and the claims in issue; (C) resolving the level of ordinary skill in the pertinent art; and (D) evaluating evidence of secondary considerations. The Supreme Court reaffirmed and relied upon the Graham four pronged test in its consideration and determination of obviousness in the fact situations presented in *KSR v. Teleflex*, 127 S. Ct. 1727 (2007); *Sankraid v. Ag Pro, Inc.*, 425 U.S. 273, 189 U.S.P.Q. 449, *reh'g denied*, 426 U.S. 955 (1976); and *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57, 163 U.S.P.Q. 673 (1969). Applicants further submit that there is no teaching, suggestion, motivation or other objective evidence in the cited references to modify the disclosed systems to include all the limitations of claims of the subject application. Reconsideration of the rejections under §102 is respectfully requested with consideration of the remarks given herein.

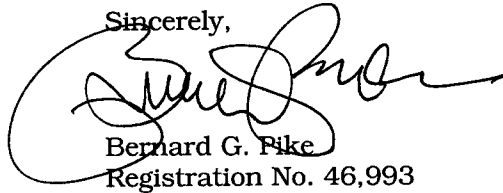
#### **New Claims**

New claims 17 to 42 have been added. No new matter has been added through addition of these claims as the subject matter was included in the specification as filed.

**CONCLUSIONS**

Applicants respectfully request consideration of the currently claims pending in the subject application and issuance of a Notice of Allowability. Should the Examiner have any remaining concerns, he is requested to contact the undersigned at the telephone number given below so that the concerns may be resolved without issuance of an additional Office Action.

Sincerely,

A handwritten signature in black ink, appearing to read "Bernard G. Pike", is written over the printed name and registration number.

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